SINBOR CO. PTE. LTD.

v.

GOLDEN TILING SDN. BHD.

HIGH COURT MALAYA, PULAU PINANG
ABDUL HAMID MOHAMED JC
[CIVIL SUIT NO. 22-356-89]
2 APRIL 1991

CIVIL PROCEDURE: *Judgment in default - Application to set aside - Whether judgment irregular - Time limited for appearance - Mistake to be treated as irregularity - Whether adequate particulars provided in statement of claim - Whether affidavit of service complied with Form 137(b) - Words "which is the registered office" omitted - Effect of - Whether liquidated damages - Judgment in foreign currency - Whether defence on the merits - Rules of the High Court 1980, O. 2 r. 1.*

The plaintiff obtained judgment in default of appearance against the defendant for an amount due on account of goods sold and delivered to the defendant.

The defendant's application to set aside the default judgment was dismissed by the Senior Assistant Registrar; hence this appeal.

It was argued by the defendant that the judgment was irregular because

(a) the time given for appearance was only 7 days instead of 8;

(b) the statement of claim failed to provide particulars of the goods and did not state the dates for their delivery;

(c) the affidavit of service did not comply with Form 137(b) in that the words "which is the registered office" was omitted;

(d) the claim was not for a liquidated demand and

(e) the judgment was in a foreign currency.

Held:

[1] No application was made to set aside the writ of summons and the service thereof and the defendant allowed the plaintiff to obtain a default judgment before applying to set aside the judgment. Although the time for appearance was 7 days instead of the usual 8 days, O. 2 r. 1 of Rules of the High Court 1980 applies and the mistake therein is to be treated as an irregularity which does not nullify the judgment obtained. This was because the mistake did not in any way prejudice the defendant. Judgment in default was only obtained 10 days after the expiry of the 8 days.

[2] The particulars of the goods and dates of delivery given in the statement of claim were sufficient as it was clearly stated that "full particulars of which had been rendered by the plaintiff to the defendant".

[3] The address to which the writ was sent was the registered address of the defendant. In addition, a copy of the writ was also sent to the defendant's address where business with the plaintiff was transacted. The defendant also did not deny receipt of the writ of summons.

[4] The claim was for a liquidated demand as it was a claim for a specific amount for the balance of the purchase price for goods sold and delivered and which was accounted for.

[5] In this case, transactions between the plaintiff and the defendant were always done in Singapore currency. Payments were made in Singapore currency. The currency of the contract was the Singapore dollar therefore the judgment obtained in Singapore dollars was a regular judgment.

[6] There were no merits in the defence as it was a bare denial. The plaintiff had exhibited all the necessary documents to back their claim and further the defendant had by a letter dated 24 August 1988 made a proposal to pay the plaintiff by instalments. The documents showed clearly that there was a debt due from the defendant to the plaintiff for the amount claimed.

[Defendant's appeal dismissed with costs.]

Cases referred to:

Federated Commerce and Navigation Co. Ltd. v. Tradax Export SA (the Maratha Envoy) [1977] 2 All ER 41 ***(cons)***

Miliangos v. George Frank (Textiles) Ltd. [1975] 3 All ER 801 ***(cit***

Seng Loong Trading Co. v. Angel Department Stores Sdn. Bhd. [1987] 1 MLJ 310 ***(cit)***

The Folias [1979] 1 All ER 421 ***(cit)***

The "Vishva Pratibha" [1980] 2 MLJ 265 ***(cit)***

Legislation referred to:

Rules of the High Court 1980, O. 2 r. 1, O. 18 r. 12(2)

For the applicant/defendant - Darshan Singh; M/s. Darshan Singh & Co.
For the respondent/plaintiff - Karin Lim; M/s. Presgrave & Matthews

JUDGMENT

Abdul Hamid Mohamed JC:

On 8 August 1989, the plaintiff filed this action against the defendant claiming the sum of S$140,657.63 being the amount due on account of goods sold and delivered to the defendant. The writ of summons was served on 18 August 1989. On 5 September 1989 the plaintiff obtained judgment in default of appearance for the amount claimed with interests and costs.

On 13 September 1989 the defendant filed an application for an order, *inter alia*, that the judgment in default be set aside. The application was heard on 4 May 1990 by the Senior Assistant Registrar who dismissed it. The defendant appealed to me and I dismissed it too.

Mr. Darshan Singh, Counsel for the defendant, first argued on the basis that the judgment was irregular. His first ground was that the time given for appearance was seven days instead of eight days. He relied on the case *Seng Loong Trading Co. v. Angel Department Stores Sdn. Bhd.* [1987] 1 MLJ 310. In that case the time limited for appearance was eight days when it should have been 12 days. The defendant applied for an order to set aside the writ of summons and the service thereof. Gunn Chit Tuan J (as he then was) allowed the application with liberty to the plaintiff to file a fresh writ.

Here no application was made to set aside the writ of summons and the service thereof. The defendant allowed the plaintiff to obtain judgment in default and then applied to set aside the judgment. I am of the view that O. 2 r. 1 of the Rules of the High Court 1980 applies and I treat the mistake (I hold that it is a mistake) as an irregularity and it does not nullify the judgment obtained. I hold this view because the mistake does not in any way prejudice the defendant in this case. Judgment in default was not obtained until after the expiry of eight days. In fact it was obtained ten days **after the expiry** of the eight days.

Secondly, it was argued that the judgment was irregular because the statement of claim did not provide particulars of the goods and did not state the dates of their delivery.

There is no merit in this argument. Paragraph 3 of the statement of claim clearly stated that in the "full particulars of which have been rendered by the plaintiff to the defendant". The account number was given. Order 18 r. 12(2) relied on by Mr. Darshan merely says how the particulars should be set out "**where it is necessary to give particulars** ...". It does not support his contention that in a case like this, particulars must be set out in detail. I hold that the particulars given in the statement of claim are sufficient. If the defendant wants more, he can always ask for them.

Thirdly, it was argued that the affidavit of service did not comply with Form 137(b) in that the words "which is the registered office" were omitted.

I am of the view that this ground too is without merits. There is no doubt that the address "No. 177 (2nd Floor), Perak Road, 10150 Penang" to which the writ was sent was the registered address of the defendant. In addition, a copy of the writ was also sent to the defendant's address at 249-E Jalan Dato' Keramat, 10160 Penang, the address where business with the plaintiff was transacted. Furthermore, the defendant did not deny receiving the writ of summons.

Fourthly, Counsel for the defendant also argued that the claim was not for a liquidated demand. In my judgment, the claim is for a liquidated demand. It is a claim for a specific amount for the balance of purchase price for goods sold and delivered and which is accounted for.

Fifthly, it was argued that the judgment was in a foreign currency and therefore irregular.

In England, the House of Lords held in *Miliangos v. George Frank (Textiles) Ltd.* [1975] 3 All ER 801 that the English Courts had power to give judgment for a sum of money expressed in a foreign currency.

In *Federated Commerce and Navigation Co. Ltd. v. Tradax Export SA* (the Maratha Envoy) [1977] 2 All ER 41 the English Court of Appeal held that Court could and should give judgment in the foreign currency where the currency of the contract was a foreign currency but the proper law of contract was the English law. This case was described by Lord Wilberforce in the House of Lords in *The Folias* [1979] 1 All ER 421, 430 as a decision "on the currency of the contract" and correct on that basis.

The Singapore Court too had held that it could give judgment in a foreign currency - see *The "Vishva Pratibha"* [1980] 2 MLJ 265.

In this case, transactions between the plaintiff and the defendant were always done in Singapore currency. Payments were made in Singapore currency. I am of the view that the currency of the contract is the Singapore dollar and the judgment obtained in Singapore dollars is a regular judgment.

Mr. Darshan Singh also argued that, even if the judgment was regular, it should be set aside because there was a defence on the merits. I am unable to agree with him. The defence is a bare denial. The plaintiff has exhibited the statement of accounts, all delivery orders and invoices. The amounts shown in the statement of accounts tally with the amount claimed. Furthermore the letter dated 24 August 1988 from the plaintiff to the defendant shows that there was a proposal by the defendant to pay by instalments.

The documents show very clearly that there is a debt due from the defendant to the plaintiff for the amount claimed and there is no merit whatsoever in the defence.

The appeal is dismissed with costs.

Also found at [1991] 3 CLJ 2949